HIGH COURT OF UTTARAKHAND AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Description of the case
Writ Petition No. 720/03 (M/S)
Devendra Kumar Dixit
Vs.
Addl. District Judge/FTC Ist,

Approved for reporting.

Not Approved for reporting

Date of Decision: 6.7.2006

Initial of Judge:

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……..

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IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 720 of 2003 (M/S)

Devendra Kumar Dixit S/o Late Shiv Bhagwan Dixit,
R/o Dera Shekhawa Mayapur,
Haridwar. ... Petitioner

Vs

1. Addl. District Judge / FTC Ist,
   District Haridwar.
2. Mahant Sarmukh Singh,
   Disciple of Mahant and Muntijim,
   Bhagwan Singh (Deceased).

2/1 Mahant Santnand Singh.

2/2 Mahant Kulwant Singh.

Both 2/1 and 2/2 Disciple of Mahant Sarmukh Singh,
R/o Dera Shekhawa Mayapur,
District Haridwar.

3. Deshraj,
   R/o Dera Shekhawa, Mayapur,
   Haridwar. ... Respondents

Sri Lok Pal Singh, Advocate for the petitioner.
Sri Pankaj Miglani, Advocate for respondent No. 2/2.

Date: 6th July, 2006

Hon'ble Rajesh Tandon, J.

Heard Mr. Lok Pal Singh, the learned counsel for the petitioner and Mr. Pankaj Miglani, the learned counsel for respondent No. 2/2.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari for quashing the orders dated 09.09.1999 and 16.07.2003 passed by the Judge, Small Cause Court, Haridwar and the Appellate Authority.

3. Briefly stated, the petitioner is a tenant in property in dispute at the rate of Rs. 5.75 per month. The respondents have filed the suit under Section 20 of the U.P. Act No. 13 of

1972 praying for the eviction of the petitioner on the ground that the petitioner is in arrears of rent from 01.01.1987 to 03.04.1988 and damages from 04.04.1988 to 03.07.1988. Respondents have also stated that the premises has been sublet by the petitioner.

4. Petitioner has filed the written statement denying the averments made in the plaint. It was stated that he has deposited the amount in proceedings under Section 20(4) of the Act and further he has not sublet the premises.

5. Documentary evidence was also filed by the parties, which is quoted below:

> "वादीगण ने रजिस्टरी रसीद 11 ग व 11ग/2 क्रमश प्रदर्श 1 प्रदर्श 2 प्राप्ति स्वीकृत रसीद 12 प्रदर्श 3, नगर पालिका के भवनों के वार्षिक मूल्य पर कर निर्धारण की सूची 95 ग प्रदर्श 4 व 95ग–1 प्रदर्श 5 रजिस्ट्री लिफाफा मय ए0डी0 दि0 1.3.88 14ग मूलवाद सं0 33 सन 94 श्री मान सिविल जज हरिद्वार द्वारा पारित आदेश दि0 6.9.94 की सत्य प्रतिलिपि 91ग–2 उक्त वाद में पक्षकारों द्वारा प्रस्तुत राजीनामा तथा पारित डिग्री की सत्य प्रतिलिपि क्रमश 96ग–2 तथा 97ग2 हरिद्वार यूनियन नगर पालिका की रसीद 92ग–1 महन्तायी के प्रस्ताव की नकल 93ग2 एवं 94ग2 महंत नियुक्त करने के सम्बन्ध में प्रस्ताव की नकल 23ग को पेश किया जबकि प्रतिवादी सं0 1 ने दस्तावेजी सबूत में महंत रेशम सिंह की ओर से भेजे गये कथित नोटिस की फोटो स्टेट प्रति, उ. प्र. राज्य विद्युत परिषद के बिल व नोटिस व राशनकार्ड की फोटो स्टेट प्रति क्रमश 11 9ग–2 व 121 ग–2 को पेश किया।"

6. The Judge, Small Cause Court, vide order dated 09.09.1999, has decreed the suit holding that the defendant is in arrears of rent from 01.01.1987 to 03.04.1988 and has sublet to the defendant No. 2 without the consent of the landlord.

7. So far as deposit under Section 20(4) of the Act is concerned, it has come in evidence that the amount having not been deposited, no relief can be granted to the petitioner.

8. According to the findings, the petitioner has deposited the amount by way of tender from 31.07.1999 to 31.12.1999 and no amount prior to this date has been deposited therefore, the petitioner is not entitled to any relief.

9. Petitioner went in revision before the District Judge by filing the revision. The Revisional Court has also recorded the finding that no amount has been deposited so as to get the benefit under Section 20(4) of the Act.

10. A counter affidavit has been filed stating therein that the tenant has not deposited the amount under Section 20(4) of the Act and his application having been rejected, he is not entitled for any benefit. Relevant paragraph 8 of the counter affidavit is quoted below:

> "8. That the contents of paragraph no. 6 of the writ petition as stated are totally wrong, misconceived and misleading thus emphatically denied. It is pertinent to mention here that the notices were issued to the petitioner on 4.7.88 for 16.9.88 requiring the petitioner's presence and on 16.9.88 the petitioner appeared in the case and submitted an application under section 20(4) of U.P. Act No. 13 of 1972. There after despite of passing of many dates the petitioner never cared to press the aforesaid application and as such on 20.7.90 the case preceded Ex-party. Thereafter on 11.9.91 the application of the petitioner under order 9 rule 7 of the Code of Civil Procedure came up before the learned Trial Court and on 1.1.93 the ex-party order was recalled. Neither the petitioner tendered the arrears of rent on the very first date nor the landlord refused it. It is further worth mentioning here that there is clear finding of the trial court that till 20.5.93 the petitioner has never cared to deposit the arrears of rent. 20.5.93 was the date fixed for the evidence and on the same date the petitioner has filed another application praying to deposit the rent after hearing upon the earlier application under section 20(4) of the U.P. Act No. 13 of 1972. Thereafter on 19.12.1993 the counsel of the

petitioner appeared before the trail court and stated that in the light of application under section 20(4) of U.P. Act 13 of 1972 the petitioner / tenant has no money to deposit. He had also consented for the rejection of the aforesaid application and as such on 19.12.93 the application under section 20(4) of U.P. Act 13 of 1972 of the petitioner was rejected. Thereafter the petitioner had sought many adjournments but again ultimately failed to appear in the case and the learned trail court was left with no other alternative but to proceed ex-party again on 9.5.95 and on 14.12.96 it was again recalled upon the application of the petitioner. Thus, it is clear that the petitioner never cared to deposit the arrears of rent on the first date of hearing rather tried to linger on the matter on one pretext or the other and such it is submitted that the petitioner had never approached the courts of law with clean hands."

11. The Judge, Small Cause Court has recorded the finding to the following effect:

"प्रतिवादी ने एक टेण्डर किराया जमा करने की बाबत जमा किया है जो कि 31.7.99 से 31.12.99 के किराये के सम्बन्ध में है परन्तु पूर्व के किराये के सम्बन्ध में कोई भी टेण्डर न्यायालय में पेश नही है। उपरोक्त परिस्थितियों में प्रतिवादी सं0 1 द्वारा मुकदमे में प्रथम सुनवाई पर सम्पूर्ण किराया वगेरहा जमा करना नहीं पाया जाता है। अतः प्रतिवादी यू0पी0 एक्ट नम्बर 13 सन् 72 की धारा 20(4) का लाभ प्राप्त करने का अधिकारी नही है। अतः बिन्दु सं0 4 साबित नही है। बिन्दु सं0 4 का निस्तारण तद्नुसार प्रतिवादी के विरूद्व किया जाता है।"

12. Further, the relevant finding recorded by the revisional court is also quoted below:

प्रतिवादी नं0 1 ने वादी की रजामंदी के बिना कानून के विपरीत प्रतिवादी सं0 2 को शिकमी किरायेदार आबाद कर रखा हैं। प्रतिवादी सं0 1 पर वादी का किराया भी बकाया हैं। अतः वादी ने प्रतिवादी सं0 1 को किराया वसूली एवं बेदखली के लिए एक नोटिस दिनांक 01.03.88 रजिस्टर्ड डाक से भेजा जो प्रतिवादी सं0 1 को दिनांक 03.03.88 को तामील हुआ जबकि प्रतिवादी सं0 2 ने रजिस्टर्ड नोटिस लेने से इनकार कर दिया। वादी ने प्रतिवादी सं0 1 की किरायेदारी नोटिस अवधि समाप्त होने के पश्चात से समाप्त कर दी। प्रतिवादी नं0 1 ने नोटिस के तामीला के बावजूद तलब किया गया किराया वादी को नहीं भेजा और न ही विवादित सम्पत्ति पर अपना कब्जा खाली करे एवं शिकमी

के कब्जे से विवादित सम्पत्ति को खाली करा वादी को कब्जा ही दिया। प्रतिवादी सं0 1 पर दिनांक 01.01.77 से 03.04.88 तक मुब0 86.25 पैसे तथा मुआवजा इस्तेमाल दिनांक 04.04.88 से 03.07.88 तक 17.25 पैसे हैं। दौरान मुकदमा दिनांक 15.11.91 को महान्त सरमुख सिंह का स्वर्गवास हो गया जिसके पश्चात वादीगण जो उनके शिष्यगण और उत्तराधिकारी है प्रतिवादी के विरूद्व वाद चलवाने के अधिकारी हैं। वाद का कारण न्यायालय के क्षेत्राधिकार से उत्पन्न हुआ क्योंकि विवादित सम्पत्ति 6.00 रूपये प्रतिदिन पर दी जा सकती हैं इस कारण वादी प्रतिवादी सं0 1 से 5.00 रूपये प्रतिदिन मुआवजा पाने का अधिकारी है। वाद का मूल्यांकन कर एवं न्यायिक शुल्क अदा कर वादी ने वर्तमान वाद दिनांक 04.07.88 को पेश किया और न्यायालय से अनुतोष चाहा कि विवादित सम्पत्ति से वादी को 103.50 रूपये किराया तथा 5.00 रूपये प्रतिदिन के हिसाब से कब्जा प्राप्त करने तक मुआवजा दिलाया जाये।"

13. From the aforesaid findings, it is evident that both the courts below have recorded the findings about the arrears of rent and subletting of the defendant No. 1 to defendant No. 2 without the consent of the landlord. The aforesaid findings are findings of fact and cannot be interfered with under Article 226/227 of the Constitution of India.

14. Relying upon the judgment of **Madan Mohan and another v. Krishna Kumar Sood** reported in **JT 1993 (1) SC 162,** it has been observed in **Sukhanand Vs. IVth Addl. District Judge, Bulandhshahr** reported in **1993(2) ARC 39** as under:-

"7. As observed by the Apex Court in its decision in the case of Madan Mohan and another v. Krishan Kumar Sood, reported in JT 1993(1) SC 162 ; 1993 SCFBRC 133, what ever protection the Rent Acts give, they do not give blanket protection for non-payment of rent'. This basic minimum requirement has to be complied with by the tenants. The Rent Acts do not contemplate that if one takes a house on rent he could continue to enjoy the same without payment of the rent. The onus to show payment of rent lies on a tenant. I respectfully fully agree with the view taken by the learned Single Judge in the decision of this Court in the case of Mahesh Chandra v. Smt. Angoori Devi, reported in 1989 (1) ARC 540. Further mere oral testimony is not sufficient in this connection. In a case where the

tenant comes forward with the allegations that the rent was paid but no receipt was issued with no explanation whatsoever, for not sending the rent by money order, then, in such a situation, the oral testimony of the tenant is regard to the payment of rent claiming discharge of the liability in this regard cannot be deemed to be worth reliance at all."

15. Further relying upon the judgment of **Madan Mohan and another v. Mohan Kumar Sood 1993 (1) JT 162** in **Mohd. Siddiqui v. Iind Additional District Judge, Unnao 1997 (2) ARC 400,** it has been observed as under:

"21. As pointed out by the Apex Court in its decision in this case of Madan Moan and another v. Mohan Kumar Sood, reported in 1993 (1) JT 162 : 1993 SCFBRC 133 (SC), whatever protection the Rent Acts give they do not give blanket protection for non-payment of rent. This basic minimum has to be complied with by the tenants. The Rent Acts do not contemplate that if one takes a house on rent he can continue to enjoy the same without payment of rent."

16. In **Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675,** the Apex Court has held as under:-

"Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear

ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a letter stage and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis."

The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

17. In view of the above, I do not find any ground for interfering with the findings recorded by the courts below. The writ petition, therefore, is dismissed.

18. However, the petitioner has prayed for some time to vacate the premises. Considering the request, it is directed

that the petitioner shall not be evicted for a period of two months from the date of receipt of certified copy of this judgment.

(Rajesh Tandon, J.)